

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.6822 OF 1987

WITH

SPECIAL CIVIL APPLICATION NO.1872 OF 1989

WITH

SPECIAL CIVIL APPLICATION NO.338 OF 1990

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

AMRUTBHAI DHANJIBHAI RATHOD & ORS.

VERSUS

STATE OF GUJARAT & ORS.

Appearance:

1. Special Civil Application No.6822 of 1987
MR SK JHAVERI for Petitioners
MR SR DIVETIA for Respondents

2. Special Civil Application No.1872 of 1989

MR DM THAKKAR for Petitioners

MR SR DIVETIA for Respondents

3. Special Civil Application No.338 of 1990

MR SK JHAVERI for Petitioners

MR SR DIVETIA for Respondents

Coram: S.K. Keshote,J

Date of decision:15/08/1997

C.A.V. JUDGMENT

#. As all these Special Civil Applications are almost of the same facts as well as grounds and as the challenge and prayers made in these Special Civil Applications are also similar, the same are being disposed of by this common order. In these matters, leading arguments have been advanced by Shri S.K.Jhaveri, learned counsel for the petitioners in Special Civil Application Nos.6822 of 1987 and 338 of 1990. Shri D.M.Thakkar, learned counsel for petitioners in Special Civil Application No.1872 of 1989 adopted the submissions made by learned counsel Shri S.K.Jhaveri.

#. The respondents have not filed any reply to the Special Civil Application, except in Special Civil Application No.6822 of 1987. After filing of these Special Civil Applications, certain other events have taken place and as such, the facts have to be referred with reference to Special Civil Application No.6822 of 1987 and 338 of 1990.

#. The petitioners in these Special Civil Applications are employed as police constables in armed branch of the police department of the Government of Gujarat. All the petitioners are having educational qualifications of SSC and/or matriculate. The petitioners have come up with the case that there are two cadres of constables, viz., unarmed constable and armed constable in the police department of the State of Gujarat. The better educated persons are recruited in unarmed branch and persons having lesser educational qualifications are recruited in armed branch. The respondent No.2, vide its memo dated 6th March 1979, pointed out that the persons who have studied upto matriculate and above should be recruited in unarmed branch unless any of them desires specifically to

join armed branch and in so far as such persons were recruited in the armed branch, that Circular stated that the matriculate recruits should be transferred to unarmed branch and be sent for training to police school, Vadodara. A copy of the Circular has been submitted by the petitioners in the Special Civil Applications. Reference has also been made to the earlier Circular on the subject dated 7th October 1976, of which, I shall make reference in the later part of the judgment. The petitioners submit that in view of the said Circular, the constable in the armed branch having qualifications of matriculate or above in various Districts of the State were being transferred to the unarmed branch whenever vacancies arose. The Director General and Inspector General of Police, Gujarat State, Ahmedabad, in his Circular No.MKM/1685/Trans.APC/KH/25866 dated 24th October 1985, wherein the earlier two Circulars aforesaid were cancelled and directed that henceforth, the armed constables who have passed SSC or higher educational qualifications can be transferred to unarmed branch in course of time and according to suitability. This suitability may be decided by C.P./D.S.P. based on a constable's performance.

#. About 75 vacancies have arisen in the District of Sabarkantha to be filled in and the third respondent has called list of persons through employment exchange at Himmatnagar and from Social Welfare Officer of the District Panchayat for interviews on the post of unarmed police constables. The petitioners learned that these vacancies have arisen and they are required to be filled in, and hence have approached the third respondent and requested that in pursuance to the above Circulars, the constables in the armed branch having qualifications of SSC or above, should be transferred against these vacancies. But what the petitioners complained was that the respondent No.3 has not acceded to this request and has called persons through employment exchange etc. Further grievance has been made that 68 constables of armed branch have been transferred by respondent No.3 without looking into the seniority as unarmed constables. However, the petitioners admitted that this has been done in view of the order of this Court in Special Civil Application No.1183 of 1982. The petitioners complain that a discrimination has been made by the respondents. The petitioners have further stated that armed constable have very limited and restricted avenues of promotion whereas unarmed constables have manifold avenues of promotion and they can reach upto the stage of Sub Inspector. The educational qualifications also can be better utilized in the unarmed branch. They further

stated that in the branch of unarmed constables, some constables have been able to reach the post of Deputy Superintendent of Police and District Superintendent of Police.

#. Earlier, this Court has decided this matter in Special Civil Application filed by Gujarat Rajya Police Constable Karmchari Mandal (Bhavnagar Unit), being Special Civil Application No.3418 of 1979, seeking therein similar relief though in respect of District Bhavnagar, on the basis of Circular dated 6th March 1979. The petitioners submitted that Circular dated 24th October 1985 was issued to overcome the judgment of this Hon'ble Court in Special Civil application No.3418 of 1979 against which Letters Patent Appeal No.261 of 1982 though was filed, but withdrawn. As per this Circular of 1985, only those armed police constables who have passed SSC and above can only be transferred subject to their suitability to be decided by C.P./D.S.P.

#. Prayers have been made by petitioners, in the aforesaid two Special Civil Applications, viz. Sp.C.A.6822 of 1987 and Sp.C.A.1872 of 1989, for directions to the respondents to fill up about 75 vacant posts of unarmed constables in District Sabarkantha under the District Superintendent of Police at Himmatnagar by these petitioners who are better educated armed constables in the first instance and restrain them from making recruitment through employment exchange or otherwise without absorbing all better educated armed constables and further directing the respondents to follow the Circulars dated 7th October 1976 and 7th March 1979 taking them to be mandatory.

#. In Special Civil Application No.338 of 1990, the petitioners therein are also from District Sabarkantha and their prayers made therein are also identical as made in the aforesaid two Sp.C.A.s. In addition to these prayers, one more prayer has been made for quashing and setting aside of the order dated 1st August 1988. The Circular dated 24/28th October 1985 has been cancelled vide Circular dated 1st August 1988 and in view of the latest Circular, the transfer of SSC armed constable now no more is there to the post of unarmed constable.

#. The learned counsel for the petitioners contended that once a policy decision has been taken by respondents to transfer SSC passed armed constables as unarmed constables, then they should have strictly adhered to it. Consistently the respondents have adhered to that practice but some attempt has been made to fill up the

posts of unarmed constables by direct recruitments. Petitions in this respect have been filed from time to time and in the year 1979, a petition has been filed and this Court, in that petition, has recognized the rights of armed constables who have certain educational qualifications. The Circular dated 24th October 1985 also recognizes that right and certain conditions have been stipulated. Otherwise also, the petitioners should have been given benefits of the Circulars aforesaid.

#. It has next been contended that the Circular dated 1st August 1988 is arbitrary and violative of Articles 14 & 16 of the Constitution of India, and though it is an administrative Circular, it cannot be made operative from retrospective effect. So whatever posts of unarmed constables are available on or before 1st August 1988, have to be filled in by transferring SSC passed armed constables subject to adjudging their suitability etc. and from 1st August 1988, this Circular could have been made effective. All the petitioners have been appointed much earlier to 1st August 1988 and as such they have acquired a right of their transfer from armed branch to unarmed branch.

##. On the other hand, the learned counsel for the respondents submitted that the petitioners have not acquired any right of transfer from the posts of armed constables to that of unarmed constables. Under the administrative Circulars, though earlier such transfers were permitted but those Circulars were contrary to the statutory rules and as such, under the Circular dated 1st August 1988, same have been cancelled. It has next been submitted that the respondents have all the right to cancel the earlier Circulars. Otherwise also, continuation of those Circulars was not justified as recruitment rules have been amended and now for both, armed constables and unarmed constables, the minimum qualification for recruitment is SSC. Earlier, the minimum qualification required for appointment on these two posts were different, i.e. for armed constable, the education qualification was much less than the educational qualification for unarmed constable. However, for both these posts, the qualification of SSC was not there and as such, looking to the nature of work to be carried out by the unarmed constables, the respondents would have considered it to transfer the armed constables to unarmed branch at that time and under the aforesaid Circular it has been decided that in unarmed branch, only qualified persons are to be taken, but that does not mean that it gives any right to the petitioners, much less an accrued right. It has further

been contended that none of the persons junior to the petitioners in armed constabulary have been transferred and as such, it cannot be said that any of the rights of the petitioners are being infringed. The post of unarmed constables has to be filled in by direct recruitment and the respondents have all the right to fill up these posts by direct recruitment. The learned counsel for the respondents submits that this Court has protected the respondents to make direct recruitment on the post of unarmed constables. The recruitments were ordered to be made though such appointments were subject to the final decision of this Court. However, the petitioners have not impleaded any of the candidates who have been appointed and their appointments have also not been challenged. So, this petition is not maintainable. When the available posts have been filled in by direct recruitment, how far the petitioners are justified to still press their claim for transfer without challenging these recruitments and impleading them as party. Lastly, the learned counsel for the respondents urged that these matters are squarely covered by two subsequent decision of this Hon'ble Court in the case of Sp.C.A.7071 of 1989 decided on 19th October 1993 and Sp.C.A. No.3831 of 1993 decided on 13th March 1996. Carrying this contention further, the learned counsel for respondents submitted that decision of this Court in Special Civil Application No.3418 of 1979 is of little help to the petitioner. However, the Circular dated 6th March 1979 has been cancelled and the petitioner could not base their claim or make any claim on the basis of said Circular which is no more in existence. In the aforesaid case before this Court, the Circular dated 6th March 1979 was under consideration but thereafter much water has flown. The recruitment rules have been amended and the previous Circulars have also been withdrawn.

##. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

##. Special Civil Application No.6822 of 1987:

This Special Civil Application has come up for admission before this Court on 24th December 1987, on which date, notice was issued and interim relief was granted in terms that, in the meantime it is directed that interviews for direct recruits may be held but appointments shall not be made and if the appointments are to be made 44 posts may be kept vacant for petitioners. On 5th February 1990, this petition was admitted and it was ordered to be heard with Special C.A. No.1872 of 1989. Interim relief which was earlier granted, has been refused. However, the respondents were directed to entertain the applications

of the petitioners for recruitment as constables in the unarmed branch as if they are fresh applicants. This order has been passed in consonance with the order passed by this Court in Sp.C.A. No.1872 of 1989 on 31st March 1989. It has further been ordered that the orders passed prior to 1st August 1988 cannot be followed in view of the Circular of 1st August 1988. So, the interim relief which has been granted in this case has been vacated.

##. Special Civil Application No.1872 of 1989:

In this case, on 31st March 1989, this Court has ordered:

Rule. Interim relief refused. However respondents are directed to entertain the applications of the petitioners for recruitment as constables in the unarmed branch as if they are fresh applicants.

##. Special Civil Application No.338 of 1990:

In this Special Civil Application, this Court has ordered that the appointments would be subject to the result of the petition.

##. So, in two Special Civil Applications, viz., Sp.C.A.6822 of 1987 and Sp.C.A.1872 of 1989, there was no stay order granted by this Court. Both, armed and unarmed constables are the posts created under the Bombay Police Act 1951. In exercise of the powers conferred by clause (b) of Section 5 of the Bombay Police Act, 1951 (Bom.XXII of 1951), and in supersession of all the prevailing orders in this behalf, the Government of Gujarat, by its notification published on 6th August 1979, framed the rules regulating recruitment to the post of Constables (Armed Branch, Unarmed Branch and Women Branch) in the Gujarat Subordinate Service, Class-III, in the police department. These Rules are known as Constable (Armed Branch, Unarmed Branch and Women Branch) Recruitment Rules, 1979 (hereinafter referred to as 'Rules 1979', for short). Rule 2 of the said Rules provides that appointment to the post of Constable (Armed Branch, Unarmed Branch and Women Branch) in the Gujarat Subordinate Service, Class III, in the police department shall be made by direct selection. Rule 3 of the Rules 1979 provides eligibility for appointment to be made by direct selection to the post mentioned in Rule 2 as under:

(a) a candidate should not be more than 22 years of age.

-- However, certain relaxation in age has been provided for special category of

persons and who have passed standard VI examination for the post of Armed Constable and standard VIII examination for the post of Unarmed Constable or its equivalent qualifications as shown in Annexure-I thereto.

(b) Physical standard were same for both posts.

As per Rule 5 of the Rules 1979, a selected candidate shall be on probation for a period of two years and as per Rule 6 of said Rules, a selected candidate shall have to undergo such training as may be prescribed by the Government from time to time. These Rules 1979 came to be amended by the Constable (Armed Branch, Unarmed Branch and Women Branch) Recruitment (Amendment) Rules 1988, notified on 15/19.2.88. Sub clause (i) of clause (b) of Rule 3 of the Rules 1979 has been amended and now the qualification for both, armed constable or unarmed constable has been prescribed to be secondary school certificate examination passed or its equivalent. The amendment made in Rules 1979 is material for decision of this case. From the Rules 1979, one thing is very clear that the mode of recruitment to the post of unarmed or armed constable was by direct recruitment. No other mode has been provided. The other modes of appointment, inter-alia, may be by transfer from the branch of armed constabulary to unarmed constabulary, but that is not the method of recruitment or mode of recruitment provided under the Rules 1979. In the Specail Civil Application No.3418 of 1979, the decision of this Court has been restricted on the Government Circular dated 6th March 1979 or the Circular dated 7th October 1976, but the counsel who was appearing for the respondents therein has not brought to the notice of the Court, the statutory Rules which have been framed by the State Government for recruitment to the post of Armed Constables and unarmed Constables. These Rules have come into force after 6th March 1979 and these two posts are altogether distinct. There is no interchangeability between these posts. The qualifications for recruitment on both the posts are altogether different. For both these posts, SSC is not the qualification prescribed in original Rules. There are other distinguishable features in these two posts. Admittedly, different training are imparted to armed constables and unarmed constables. The nature of duty of armed constable and unarmed constable is different. Over and above, the seniority of these two categories have been separately maintained. Not only this, the channel of promotion has been provided to different posts. So

there is no interchangeability. These posts are altogether different, separate and distinct. Different qualifications are prescribed, different seniority has been prescribed and mode of promotion is also different from these posts and as such for all the purposes, these two posts are of different categories. When this is the position of statutory Rules, whether the Circular of 6th March 1979, though on this question this Court has not gone into, can be said to be legal and in consonance with the Rules 1979? Similarly, a question does arise as to whether the subsequent Circular of 1985 can also be said to be in consonance with the Rules 1979. The obvious reply, in the light of Rules 1979, would be that they cannot. The respondents could not have provided a mode of recruitment to the post of unarmed constable from the post of armed constable, de-hors of in the Rules 1979. It is settled law that administrative Circulars cannot be contrary to the statutory Rules and where the administrative Circulars are repugnant to the statutory Rule, the statutory Rules are to be given effect to. The administrative Circulars cannot supersede the statutory Rules. Much reliance has been placed by the counsel for the petitioner on the decision of this Court in Special Civil Application No.3418 of 1979, but in that decision, Rules 1979 have not been considered as nobody has brought them to the notice of the Court. The matter would have been different that after referring to the Rules 1979, decision in that Special Civil Application have been given, which is not the case here.

##. In Special Civil Application 7071 of 1989, the Circular of 1st August 1988 has come up for consideration. Rules 1979 were also referred to. This Court, in Special Civil Application No.3418 of 1979, has held that Circulars of 1976 and 1979 are merely administrative instructions and not service conditions or Rules under Article 309 of the Constitution of India. This Court, in the later decision, has also held that the Circular of 1979 has no statutory force. In Special Civil Application No.7071 of 1989, the petitioners therein, who were armed constables, prayed to issue a writ of Mandamus, directing the respondents to give benefits as enumerated in the Circular dated 28th October 1985 and further by amendment, they have challenged the validity of Circular dated 1st August 1988. This Court held that the Circular dated 28th October 1985 is merely policy introduced by the Head of the Department with a view to give some opportunity or facilities to the constables who possess higher educational qualification but that position is now changed by amended Rules, which came into force from 1988 and in view of that, the second

Circular, i.e. the Circular of 1988 has been issued by Head of the Department cancelling the earlier policy. The Court has further held that it is well settled law that the policy is unamended and it can be introduced and it can be withdrawn or cancelled. Policy cannot be enforced by order of the Court. There is no violation of any statutory provision. On the contrary, amended Rules of 1988 have statutory force and it has been framed under the powers conferred by Clause (b) of Section 5 of the Bombay Police Act, 1951 (BOM.XXII of 1951), under Article 309 of the Constitution of India. The Court has further clarified that the respondents, while cancelling the Circular Annexure D, therein, by Circular Annexure F therein, has stated that the said Circular Annexure D, therein, was in contravention to the Rules. However, the Court has held that there was no such contravention in the said Circular Annexure D because it was issued as a policy and hence there was no such contravention to old unamended Rules 1979. The Court has further held that in unamended Recruitment rules, two separate educational qualifications for armed police constables and unarmed police constables are prescribed and therefore after appointment of constables in unarmed branch, the constables who had higher qualification, were given an opportunity to serve in unarmed branch by way of transfer from armed branch. The learned counsel for respondent who was appearing therein made submissions that under the amended recruitment Rules there is a direct selection of unarmed constables and not by way of transfer from other branch and this contention has been held by this Court, in view of that position, to be correct. The view taken by this Court that the Circular Annexure D is not contravention of Rules 1979 may not be correct, but I do not consider it to be appropriate to refer to this matter to larger Bench for the reason that the learned Single Judge has accepted the contention of the counsel for respondent to be correct that under the amended Recruitment Rules, there is a direct selection of armed and unarmed constables and not by way of transfer to other branch. In the Rules 1979, both the posts of unarmed and armed constables are to be filled by direct recruitment and by amendment of these Rules, in 1988, this position has not been changed. This Court, while deciding the matter, only noticed one part of the rules, but a plain reading of Rules 1979, as stated earlier, provides only one mode of recruitment to both the posts of unarmed and armed constables, i.e. by direct recruitment. Transfer is not one of the modes of recruitment to either of the branches. So when this contention has been accepted to be correct by the learned Single Judge, then with due respect, the Resolution dated

1st August 1988 may not be incorrect to say that the earlier Circular has been made in contravention of statutory Rules. As earlier stated, by policy decision or administrative Circulars, both of which are administrative, Rules cannot be supplemented to the extent of providing a mode of recruitment which is not provided by the Rule making authority. It is not a case where any gap which was there is filled in, but it is a case where Rule making authority has provided only and only one mode of recruitment, i.e. by direct selection. So when the posts of armed constables and unarmed constables are to be filled in only by direct selection and when these two posts are altogether different, distinct and are separate categories of posts, and when there is no mode of recruitment by transfer, the claim of the petitioners for their transfer on the post of unarmed constable does not sound any merit. It is true that for all these years, prior to 1988, policy decision or the administrative Circulars were given effect and many of the armed constables were transferred to unarmed branch as unarmed constables on the basis of their qualifications, but that administrative policy or Circular does not give any vested right to the petitioners or it cannot be said that they have acquired any indefeasible right of transfer from the post of armed constables to unarmed constables. However, this decision may not be taken to be a decision to reopen all the cases of transfer of armed constables as unarmed constables. Whatever has been done or made, has already attained finality and it has also been done in accordance with the decision of this Court in Special Civil Application No.3418 of 1979, and therefore these cases are not liable to be reopened. But the question is whether the petitioners can legitimately claim transfer in view of the position of Rules 1979 as well as amended Rules in the year 1988, and the Government Resolution dated 1st August 1988. The matter would have been different where the persons junior to the petitioners would have been transferred but that is not the case here. If we go by the Resolution of 28th October 1985, transfer has to be made in order of seniority and subject to suitability and none of the persons junior to petitioners have been transferred. So any plea of discrimination is also not available to the petitioners. The contention of the learned counsel for the petitioners that all the posts of unarmed constables which were there earlier till 1988 should be filled in by transfers from armed branch having qualifications of SSC or higher qualifications, is untenable as that right only flows from the policy decision or administrative Circular and this Court has held in Special Civil Application No.7071 of 1993 that

policy decision cannot be enforced by order of the Court. The petitioners have no case. The recruitments have been made on the basis of two separate categories and as per Rules 1979, age eligibility is also there. If the contention of the learned counsel for the petitioners is accepted and the policy decision or Circulars are given effect to, then the transfers of constables from armed branch to unarmed branch, will be appointments by transfer, of candidates who may not be having age eligibility. It is significant to mention here that Rule 3 of the Rules 1979 nowhere contemplates any relaxation in the age in case of a candidate already in service of Government. This Court, in Special Civil Application No.3831 of 1993, held as under:

.... It transpires from the record that there are two independent cadres of Armed Constables and Unarmed Constables and the nature of work done by the incumbents of these two cadres differs. For this purpose, different types of training is given to the incumbents of these cadres. The Unarmed Police Constables are concerned with investigation of offences and have to do more paper work than the Armed Police Constables. The Armed Police Constables perform different types of duties.... Admittedly, these cadres of Armed and Unarmed Police Constables are different and their seniority is separately maintained. In view of these facts, the petitioners have no legal right to claim appointment in the cadre of Unarmed Police Constables.....

That was the case of appointment of Armed constables after 1.1.88. In the case of Chandra Gupta, I.F.S. v. Government of India and Ors., reported in (1995)1 SCC 23, Their Lordships have observed that right for consideration is a condition of service, but mere chances of promotion is not a condition of service. So the right for consideration of appointment is a fundamental right, but not a right of appointment. Merely because at one point of time, leaving apart the question of validity of the Circulars, the petitioners may have had a chance of transfer from armed branch to unarmed branch, the same cannot be said to be a service condition. When this was not a service condition, then where is the question of any vested right or accrued right on the basis of policy decision or administrative Circulars. As stated earlier, this Court, while deciding Special Civil Application No.3418 of 1979 held that the Circulars of 1976 and 1976, impugned in that Civil Application, are merely

administrative instructions and not service conditions or rules under Article 309 of the Constitution of India. In this background how far the claim of the petitioners on the basis of same for transfer can be justified. If these Circulars are not service conditions, then certainly the respondents have all powers to cancel them. Otherwise also, even the chances of promotions are also not service conditions, then how mere chance of transfer under administrative Circulars can be said to be service condition? With due respect to my learned Brother Justice V.H.Bhairavia, for whom I have highest regard, I express my inability to concur with the view expressed by him that the Circular dated 28th October 1985 is not in contravention of Rules 1979, except this observation, the judgment fully covers the issue in this case and for the rest part of the judgment, I fully concur with the same, and as such, I do not consider it to be appropriate to refer the matter to the larger Bench. Reasons to reach this conclusion may be different but the petitioners have no case whatsoever.

##. The matter needs to be considered from another aspect. The Circular dated 24th October 1985 provides that ten posts in a District and 25 posts in Commissionerate are to be filled in by transfer in the unarmed branch quarterly, however, subject to adjudging of suitability. So certain posts of unarmed constables for all the years to come have to be filled in by transfer of armed constables. The schemes of Rules has already been taken into consideration and which is very specific and clear that the post of unarmed constable has to be filled in by direct selection and that too of armed constables also. In the case of Prem Singh & Ors. v. Haryana State Electricity Board & Ors., reported in JT 1996(5) SC 219, Their Lordships held that the selection could not be made for future vacancies. So even an unarmed constable who has been selected, but his name has been placed in waiting list, cannot be given appointment against future vacancies. If that is so, how far it can be said to be justified and in consonance with provisions of Articles 14 & 16 of the Constitution of India to fill in those future vacancies by transfer of armed constables. Articles 14 & 16 of the Constitution of India confer a fundamental right on all eligible candidates, of consideration for appointment in public employment. Though thousands of candidates would have acquired the eligibility for the post of unarmed constable, but as per the Circular dated 24th October 1985, all these posts were required to be filled in by transfer of armed branch constables. The matter would have been different where under the statutory Rules, such

transfer would have been recognized as one mode of recruitment, which, as stated earlier, is not there. Otherwise also, this Circular is in contravention of Articles 14 & 16 of the Constitution and on the basis of an unconstitutional Circular, how far the claim of the petitioners for transfer can be accepted by this Court, sitting under Article 226 of the Constitution of India. In the case of Prem Singh v. Haryana State Electricity Board (supra), Their Lordships also considered the question of locus-standi of candidate challenging the selection and appointments of candidates in excess of the of number of posts advertised. In that case, Their Lordships held that the candidate has certainly locus-standi to challenge the appointments sought to be made against vacant posts in excess of number of posts advertised and against posts which will become vacant after acquiring eligibility. So, the Circular dated 25th October 1985 or earlier Circulars should stand to the test of Articles 14 and 16 of the Constitution and in view of the law as laid down by Their Lordships in the aforesaid two cases, the claim of petitioners on the basis of said Circulars cannot be sustained. If the claim of petitioners, in view of above settled law, is allowed, then this Court will act contrary to Articles 14 & 16 of the Constitution of India by depriving thousands of persons eligible for appointment on the post of unarmed constables, a right of consideration.

##. The matter may still be looked into from another angle. Earlier to 1988, the qualifications for appointment on the post of armed constables and unarmed constables was VI and VIII standard pass respectively and possibility is there that many persons with qualifications of VIII standard would have been appointed as unarmed constables and many persons having qualifications of Matriculate or equivalent would have been appointed as armed constables. In this context a decision would have been taken to accommodate the persons in armed branch, having qualifications of Matriculate or equivalent, them unarmed branch, but now after the amendment in the Rules 1979 made in February 1988, the minimum qualification prescribed for unarmed constable and armed constable is SSC, how far this claim for transfer otherwise stand to any reasonability or rationality. It is a settled law that where vacancies are available, and number of candidates found fit, the successful candidates do not acquire any indefeasible right to be appointed. This right can be denied legitimately. In this respect, reference may have to the decision of Hon'ble Supreme Court in the case of Shankarsan Dash v. Union of India, reported in 1991(3)

SCC 47. This decision has been followed in many later decisions of the Hon'ble Supreme Court. That matter related to right of appointments of candidates on the posts who have been empaneled after selection. The Hon'ble Supreme Court laid down that even if a candidate has been selected and vacancies are available, the successful candidate do not acquire any indefeasible right to be appointed. This right can legitimately be denied and the question that arises is similar in the present case. The petitioners are claiming that they have a right of transfer to another category of posts. So they are making a claim as if they have a right of appointment by transfer on altogether different category of post. Under the Circular dated 1st August 1988, this right has been taken away, meaning thereby, now henceforth, the transfer of SSC passed armed constable to the post of unarmed constable is not permissible. The question which now arises is whether the respondents can legitimately deny the benefit of transfer to the petitioners or not and whether the petitioners do acquire any indefeasible right or not. In such matters, the Court has to consider whether the ground given for denial of appointment in the case of selection which was there before the Hon'ble Supreme Court and for transfer to another category in the present case by respondents, is justified or not. The respondents have come up with the case that now after amendment in the Rules of 1979, the unarmed constables have to be only SSC passed and as such, no further transfer is to be made. Leaving apart the question that the earlier Circular were contrary to the statutory Rules, this is another ground given by respondents. This ground is perfectly legal and justified as now it cannot be said that there is any dearth of qualified unarmed constables. Only the candidates who are SSC will be given appointment. It is a fact to be noticed that thousands of SSC passed candidates are unemployed and there will not be any difficulty for respondents to get SSC passed candidates for the post of unarmed constables from the open market. The prayers made by the petitioners, if accepted, then this Court will accept the claim of petitioners that they have vested right under administrative Circulars and secondly this Court will deny lacs of candidates, their right for consideration of appointment on the post of unarmed constables.

##. The vacant posts of unarmed constables would have been filled in by respondents as this Court has not stayed direct recruitment by selection, on these posts. It is true that in one case, i.e. Special Civil Application No.338 of 1990, this Court has ordered that

the appointment made shall be subject to decision of this Court, but in other two matters, stay order has been vacated in toto. So whatever appointments which have been made are not subject to decision of this Court in two matters. However, so far as the third matter is concerned, as aforesaid, the appointment orders will be subject to decision of this Court, but the fact that the persons who have been appointed after direct selection are not before this Court, needs to be considered. This is yet another ground on which this writ petition deserves to be dismissed. In case the petitioners are protected, i.e. this Court gives directions to the respondents to transfer them as unarmed constables, then the persons who have been appointed by direct recruitment and working for all these years will have to be sent back home to make room for the petitioners. The petitioners are already in employment, though as armed constables whereas the persons directly and bonafidely recruited will have to suffer without there being any fault of their in case they are asked to go back. In the case of Ishwar Singh & Ors. v. Kuldip Singh & Ors., reported in 1995 Supp.(1) SCC 179, Their Lordships of the Hon'ble Supreme Court held that writ petition impugning selection and appointments without impleading and serving all the selected candidates is not maintainable; Moreso when the appointments had already been made. In the present cases, very specifically the selection and appointments have not been challenged by amendment of Special Civil Applications. Reading of prayer made in Special Civil Application and interim relief prayed for, clearly gives out that the petitioners have prayed for injunction against respondents not to make any direct recruitment or selection on the said post. So the selection by direct recruitment is not directly in issue and in fact, as the stay was not granted by this Court, selection has been made. In one case, there may be an order that selection will be subject to decision of this Court, but despite that condition the question that arises is whether these persons should be ousted from services or asked to go home without giving any opportunity of hearing? The obvious reply to this question is in negative. The petitioners were knowing this fact very well and further that in two cases there was no stay order, they sat silent and they have not impleaded all the selectees as party to these petitions. Moreover, as observed by Hon'ble Supreme Court in the case of Ishwarsingh Ishwar Singh & Ors.v.Kuldip Singh & Ors. (supra), appointments have been made in the year 1990 and now more than seven years have passed, and as such, otherwise also the petitioners deserve no sympathy or equity to be transferred to the post of unarmed constables. In fact,

in that eventuality, they would oust all the selected persons working on the posts.

##. Taking into consideration the totality of the facts of the case, none of the legal or fundamental rights of the petitioners are being infringed. The Special Civil Applications are dismissed. Rule discharged in all Special Civil Applications. Interim relief, if any, granted by this Court, stands vacated. No order as to costs.

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